IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12605 of 2007
With
SPECIAL CIVIL APPLICATION No. 12606 of 2007
With
SPECIAL CIVIL APPLICATION No. 10961 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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DEVENDRAKUMAR GAJESING JAT THRO COUSIN BROTHER-KRISHAN SANJAYKUMAR MAHENDRASINH JAT THRO COUSIN BROTHER-JAYKUMAR MANOJGIRI JASHANGIRI GAUSWAMI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AR SHAIKH for Petitioner(s) : 1,
MR SHIVANG SHUKLA ASSTT GOVERNMENT PLEADER for Respondent(s) : 1-3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 15/10/2007

ORAL JUDGMENT :

1. By the present petitions under Article 226 of the Constitution, petitioners have sought

the relief of orders dated 12.04.2007 of their detention being set aside. The impugned orders dated 12.04.2007 are issued by Police Commissioner, Rajkot in exercise of his powers conferred under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) on the basis that the petitioners were found to be repeatedly indulging in anti-social activity of bootlegging and an offence being III-C.R.No.223 of 2007 under the Prohibition Act was registered on 09.04.2007 against the petitioners in "B" Division Police Station of Rajkot in which 202 bottles of liquor is stated to have been recovered from them. According to the grounds of detention supplied with the impugned orders, even as the aforesaid offence was being investigated, other actions under the Prohibition Act were not possible and alcohol being injurious to health, there was likelihood of danger to public health on account of consumption of illicit liquor in which the petitioners were dealing. It is further stated that possibility of the petitioners continuing in anti-social activities could not be denied and hence it was found to be necessary to detain the petitioners after considering the documents and statements which were relied upon and supplied to the petitioners.

2. Even as the present petitions were admitted on 26.04.2007 and 10.5.2007 and affidavits-in-reply of the detaining authority were ready and executed on 31.5.2007 and 13.06.2007, they were submitted to this court and copy thereof supplied to the petitioners only on 28.09.2007. It is stated in those affidavits, *inter alia*, that *prima facie* involvement of the petitioners were established in the offence registered against them. It is further stated: "*5. ....I say that in the present case, amongst the relevant materials, I have carefully examined the documents relating to the one case registered against the detenu and from those materials, it is clear that the detenu falls within the definition of "boot-legger" as defined u/s.2(b) of the PASA Act. Therefore, on carefully scrutinising, examining and considering the materials placed before me including the papers pertaining to the above case and after applying my mind to the facts of the case, I came to the conclusion that the detenu is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of his anti-social and boot-legging activities may cause grave or wide-spread danger to life, property and public health. Therefore, after subjectively satisfying that the anti-social and boot-legging activities*

of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu under the PASA Act with a view to immediately prevent him from continuing such illegal, anti-social and boot-legging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper".

3. In the above facts, it was sought to be argued on behalf of the respondents that danger to public health caused by the activity of bootlegging by the petitioners substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing their detention were legal and justified.

4. As held by this court in ***Amarbhai Kanjibhai Nayak v. Commissioner of Police,***

Ahmedabad City & Ors. [1993 (3) G.L.R. 2703] and in ***Sohanlal Surajaram Visnoi v. State of Gujarat [2004 (2) G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of sub-section (4) of section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at the subjective satisfaction.

5. Therefore, in the facts and circumstances, the impugned orders dated 12.04.2007 of preventive detention are found and held to be unsustainable in law and set aside

with the direction that the petitioners, (1) Devendrakumar Gajesing Jat in SCA No.12605 of 2007, (2) Sanjaykumar Mahendrasinh Jat in SCA No.12606 of 2007 and (3) Manojgiri Jashangiri Gauswami in SCA No.10961 of 2007, shall be set at liberty forthwith unless required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)